

Before the  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Grand Island Post Office  
Grand Island, Nebraska

Docket No. A2017-1

PUBLIC REPRESENTATIVE RESPONSE  
IN SUPPORT OF UNITED STATES POSTAL SERVICE  
MOTION TO DISMISS PROCEEDINGS

(May 31, 2017)

Pursuant to 39 C.F.R. § 3001.21(b), the Public Representative hereby responds in support of the Postal Service's motion to dismiss Petitioners' appeal of its decision to relocate the Grand Island, Nebraska main post office.<sup>1</sup>

I. PETITION FOR REVIEW

On May 9, 2017, the Commission docketed an appeal of the Postal Service's decision to relocate the retail operations currently housed in its Grand Island main post office (MPO) to a local processing and distribution facility 3.1 miles away.<sup>2</sup>

Petitioners argue that the Postal Service's action in this case constitutes a consolidation of postal facilities and request that the Commission review the Postal Service's decision. Petition at 1. The Petition further alleges that the Postal Service "did not comply with the legal requirements for the decision making process." *Id.* Specifically, Petitioners claim that the Postal Service did not conduct a feasibility study,

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<sup>1</sup> Docket No. A2017-1, Motion of the United States Postal Service to Dismiss Proceedings, May 22, 2017 (Motion to Dismiss).

<sup>2</sup> Letter dated May 2, 2017 (Petition). The letter was signed by Pamela E. Lancaster, Chair of the Hall County Board of Supervisors and written on behalf of the Hall County Board of Supervisors (Petitioners).

gave only 30 days for public comment, and did not inform the public of its right to appeal to the Commission. *Id.*

The Commission initiated this proceeding to consider the Petition.<sup>3</sup> In its notice, the Commission established May 22, 2017 as the deadline for the administrative record or responsive pleading. *Id.* The Postal Service filed its Motion to Dismiss on May 22, 2017.

## II. POSTAL SERVICE MOTION TO DISMISS

The Postal Service's Motion to Dismiss argues that the Commission does not possess jurisdiction to consider the instant appeal because the underlying decision concerns a relocation, not a closing or consolidation. Motion to Dismiss at 1. The Postal Service avers that a Postal Service decision "must concern a discontinuance action" to be appealable to the Commission. *Id.* at 3. The Postal Service cites to a substantial body of Commission precedent supporting this position. *Id.* at 3-10. Additionally, the Postal Service contends that, even if the Commission has jurisdiction to review decisions to relocate retail operations, the Postal Service complied with its relocation regulations, codified in 39 C.F.R. § 241.4. *Id.* at 9-10.

In support of its argument, the Postal Service notes that its final decision letter states that it is "relocating the Grand Island MPO." *Id.* at 2, Exhibit 1. The Postal Service argues that its final decision letter "makes clear that the Postal Service will provide the same services at the relocation site as it provides at the current MPO site." Motion to Dismiss at 3. The Postal Service also represents that, following this decision, "the Grand Island community will maintain the same number of retail facilities and will continue to have the same level of access to retail services. *Id.* at 9.

## III. DISCUSSION

The Commission possesses jurisdiction to hear the appeal of any "determination of the Postal Service to close or consolidate any post office." 39 U.S.C. § 404(d). However, the Commission does not possess jurisdiction over decisions to relocate

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<sup>3</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, May 11, 2017 (Notice).

postal facilities.<sup>4</sup> Relocation decisions are governed by 39 C.F.R. 241.4, which provides for direct appeal to the Postal Service.

The distinction between consolidation and relocation decisions can be confusing because the colloquial definitions of the two terms are similar. This is especially true in cases such as this one, wherein the Postal Service has decided to cease retail operations at an existing facility without adding a new facility.

The Postal Service's regulations provide clarity. They narrowly define consolidation as "an action that converts a Postal Service-operated retail facility into a contractor-operated retail facility." 39 C.F.R. 241.4(a)(2)(iii). On the other hand, relocation is defined as a "decision to relocate all retail services from a retail service facility to a separate existing physical building, or to add a new retail service facility for a community," precisely the situation at hand. 39 C.F.R. 241.4(a)(1).

The Commission lacks subject matter jurisdiction to hear the instant appeal because the underlying Postal Service decision was a relocation decision instead of a consolidation decision. Without subject matter jurisdiction the Commission cannot reach the Petitioners' other procedural claims regarding the feasibility study, public comment period, or right to appeal.

#### IV. CONCLUSION

For the reasons stated above, the Commission should grant the Postal Service's Motion to Dismiss for lack of subject matter jurisdiction.

Respectfully Submitted,

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<sup>4</sup> See e.g., Docket No. A2015-3, Order Granting Motion to Dismiss, June 18, 2015.